



UNIVERSAL MUSIC
PUBLISHING GROUP

October 30, 2020

DAVID KOKAKIS, ESQ.
CHIEF COUNSEL

VIA E-MAIL (REGANS@COPYRIGHT.GOV)

Regan Smith
General Counsel and Associate Register of Copyrights
Library of Congress
101 independence Avenue, SE
Washington, DC 20559-6003

RE: Summary of ex parte conversation on October 23, 2020 regarding notice of proposed rulemaking for MMA transition period transfer and reporting of royalties to the Mechanical Licensing Collective, Docket No. 2020-12

Dear Ms. Smith:

On Friday, October 23, 2020, I, David Kokakis, Chief Counsel, Universal Music Publishing Group (“UMPG”), and Amy Isbell, Senior Vice President, Public Policy and Government Relations, Universal Music Group, spoke to you and Jason Sloan of the United States Copyright Office (“USCO”) regarding the transfer of unclaimed royalties to the Mechanical Licensing Collective (“MLC”) in the instance where a private litigation settlement agreement may be applicable (Docket No. 2020-12). This letter is intended to summarize our discussion. We appreciate you affording us the opportunity to share our views.

As discussed, the MMA explicitly requires digital services that wish to take advantage of safe harbor protections (from statutory damages in suits post-January 1, 2018) to turn over to the MLC, on February 15, 2021, all reports for unmatched usage from the inception of the service, together with all royalties associated with that unmatched usage. The goal of the MMA, from its inception, was to quickly get unmatched royalties off the books of the digital services and into the hands of the proper songwriters and publishers in as efficient and transparent a manner as possible.

The USCO asked how settlement payments that were made to certain publishers under voluntary agreements should be handled by the regulations, if at all. UMPG believes that the MMA has explicit requirements regarding the payment by digital services of historic unmatched royalties and that the USCO rulemaking process should not alter those statutory requirements. UMPG believes that any issues relating to payments under private settlements can and should be dealt with between the contracting parties. UMPG intends to assist and facilitate voluntary procedures for doing so with the digital services, to the extent applicable.

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If, as some have suggested, digital services are instead allowed to “discount” their gross royalties owed by amounts paid under settlement agreements, it would undoubtedly disadvantage and penalize those songwriters and publishers who were not subject to those private settlements. The MMA clearly does not permit the digital services to estimate, offset or reduce payments otherwise due. Digital services should report and remit to the MLC all royalties, as required by law. Although some have characterized paying over to the MLC unmatched royalties for certain periods also covered by voluntary settlement agreements as “double payments,” UMPG contends that such a characterization is inaccurate and that the MMA’s requirements ensure fair and accurate payments to copyright owners, especially those who have not entered into voluntary settlement agreements.

UMPG also noted that payments made by digital services under voluntary settlement agreements are shared with our songwriters. UMPG does so as a matter of policy, notwithstanding the fact that applicable contracts may not require payment for non-title-bound revenues.

Thank you for your time and consideration. Please feel free to reach out with any further questions.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "David Kokakis", written in a cursive style.

David Kokakis